



November 17, 2005

By Electronic Delivery

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution
Avenue, NW
Washington, DC 20551
Attn: Docket No. OP-1232

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 05-15

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2005-26

Re: Request for Burden Reduction Recommendations

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to a notice for regulatory burden recommendations ("Notice") and request for public comment by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation and the Office of Thrift Supervision.¹ The Notice requests comment on ways to reduce burden associated with the rules governing banking operations. Specifically, Visa is providing comments with respect to the Board's Regulations D (reserve requirements of depository institutions) and CC (expedited funds availability), and the applicability of existing and contemplated requirements of these regulations to prepaid card products.

The Visa Payment System, of which Visa U.S.A.² is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. For calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. Visa

¹ 70 Fed. Reg. 46,779 (Aug. 11, 2005).

² Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting sensitive personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

REGULATION D (RESERVE REQUIREMENTS)

Regulation D sets uniform requirements for all depository institutions to maintain reserve balances either with their Federal Reserve Bank or in the form of vault cash. Under current Regulation D requirements, the definition of a "deposit" includes "[a]ny liability of a depository institution . . . that is issued or undertaken by a depository institution as a means of obtaining funds."³ Thus, given the broad scope of Regulation D's definition of "deposit," it is possible that the Board could conclude that all prepaid card products should be considered "deposits" and thus subject to reserve requirements. We believe, however, that the application of reserve requirements to prepaid card products is inappropriate and would stifle innovations in the prepaid card market that benefit consumers, businesses, philanthropic organizations and government entities.

In this regard, we note that the Board has broad power to define the types of deposits that are subject to reserve requirements,⁴ and has expressly reserved the right to determine that individual accounts may be transaction accounts by either rule or order.⁵ At the same time, we note that over the years the Board has exempted, for various policy reasons, other banking liabilities such as repurchase agreements in U.S. government or agency securities from the reserve requirements. Further, depository institutions typically mitigate the effects of reserve requirements through various reserve management techniques that reduce significantly their non-interest bearing balances that are subject to reserve requirements. For example, many depository institutions have used sweeps between money market deposit accounts and transaction accounts to dramatically reduce reserve requirements. This process has taken place with the tacit agreement of the Board. While we understand that the Board believes that reserve requirements on some level of transaction accounts may be necessary to assure that there are sufficient required reserve balances maintained at Federal Reserve Banks to provide stability to the federal funds rate, we do not believe that the issuance of prepaid cards by depository institutions poses any threat to that level of balances.

Moreover, Visa is not aware of any consumers who abandon bank deposits in favor of prepaid card products. Generally, prepaid card products, such as gift cards, travel cards and payroll cards, are substitutes for the holding of cash or other instruments, such as gift certificates or traveler's checks issued by non-banks. Accordingly, Visa does not believe that exempting prepaid card products from reserve requirements would have an adverse effect on existing reserve balances, the stability of the federal funds rate, or the Board's ability to conduct monetary policy. Visa would welcome the opportunity to discuss these issues further with Board staff if there is a concern about the potential effects of prepaid card products on the Board's ability to conduct monetary policy.

³ 12 C.F.R. § 204.2(a)(1)(vii).

⁴ See 12 U.S.C. § 461.

⁵ 12 C.F.R. § 204.2(e)(6).

Further, the failure to exempt prepaid card products from reserve requirements will stifle prepaid card product innovation. Unlike typical transaction accounts, prepaid card products do not generate significant balances that can be lent or invested to provide a return that covers the cost of issuing the cards, processing transactions on the cards and a market return on investment. Rather, prepaid card products are thin margin products that rely largely on fees to cover costs and provide a market rate of return. In this context, the imposition of reserve requirements on these prepaid card balances represents an additional cost that must be recovered through fees to consumers and provides a market advantage to non-bank issuers of prepaid card products. Over time, the advantage would likely cause prepaid card products to migrate to non-bank issuers that are not covered by reserve requirements. This migration would also lead to reduced competition in the market for prepaid card products as many small bank issuers could be driven out of that market.

At the same time, prepaid card products are providing important benefits to consumers, businesses, philanthropic organizations and government entities. For example, disaster relief efforts in connection with the recent spate of hurricanes in the U.S. is being aided by the distribution of prepaid cards, both open and closed looped, to victims of those disasters by private organizations. These prepaid cards provide hurricane victims with the ability to purchase essential items, including gas, groceries, medicines and telephone access regardless of an individual's banking status and/or location. Moreover, there is increasing interest by both state governments and the federal government to utilize prepaid card products to ensure that victims of such disasters, or similar events, have adequate access to financial services. However, given the thin margin on prepaid card products discussed above and the potential for small bank issuers to be driven out of the market, we believe that the imposition of reserve requirements on such prepaid card products could curtail their availability—further disadvantaging consumers.

For these reasons, Visa requests that the Board exempt prepaid card products issued by depository institutions from the definition of “deposit” in Regulation D.

REGULATION CC (EXPEDITED FUNDS AVAILABILITY)

Visa believes that the application of the Board's Regulation CC to certain prepaid card products is inappropriate. Regulation CC contains rules regarding the duty of a bank to make funds deposited into accounts available for withdrawal according to certain schedules. Regulation CC also requires that financial institutions provide customers who have a transaction “account” disclosures stating when their funds deposited at the financial institution will be available for withdrawal.⁶ Regulation CC was adopted to address the problems of holds that banks often place on bank deposits by check and certain other means.

While exempting prepaid card products from Regulation D's definition of “deposit” would also exclude prepaid card products from the coverage of Regulation CC, we believe that this exclusion would not be inconsistent with the purpose of Regulation CC. Typically, prepaid card products are bought and then activated promptly after they are received. There is no delay in the activation process due to the type of payment used to purchase the prepaid card. Although

⁶ 12 C.F.R. pt. 229.

November 17, 2005

Page 4

some prepaid cards may be reloaded, this process is usually accomplished by electronic payment rather than check and there is no material delay in the availability of the funds. Therefore, we believe that the application of Regulation CC to prepaid card products, in addition to being complex and costly, would confuse consumers who, as discussed above, would not experience a delay in access to their funds, but who would still receive the required disclosure under Regulation CC.

We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely

Russell W. Schrader
Senior Vice President and
Assistant General Counsel